SUPREME COURT, U. S.

FILED

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No. 577

In the

Supreme Court of the United States

OCTOBER TERM, 1967

LAURIL M. ALLIS,

Petitioner,

v.

LOUIS ALLIS, JR. and
WESTERN FARMS, LTD.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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September, 1967

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on June 7, 1967.

OPINION BELOW

The District Court issued no opinion. The opinion of the Court of Appeals is printed in the Appendix hereto. It is as yet unreported.

JURISDICTION

The statutory provision invoked to sustain the jurisdiction of this Court is Section 1254(1) of Title 28 of the United States Code. The judgment of the Fifth Circuit was entered on June 7, 1967.

QUESTIONS PRESENTED

1. Whether there is a genuine issue as to any material fact alleged by Petitioner Lauril M. Allis as the basis for her claim to a community and homestead interest in the Rolling Hills Ranch.
2. Whether the Nevada judgment purporting to determine title to Texas Realty is void for want of jurisdiction.
3. Whether as a matter of comity the Courts of the State of Texas will give effect to a Nevada judgment determining that the Rolling Hills Ranch located in Collin County, Texas, is the separate property of Respondent Louis Allis, Jr.
4. Whether the Courts of the State of Texas must give full faith and credit to the Nevada judgment determining that real property locate din Collin County, Texas is the separate property of Respondent Louis Allis, Jr.

CONSTITUTIONAL PROVISION INVOLVED

The pertinent part of the section of the United States Constitution which is involved herein is Article IV, Section 1:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

STATEMENT

This suit was commenced by Petitioner Lauril M. Allis on October 13, 1964 in the 59th Judicial District Court of Collin County, Texas (R. 4-13). On November 6, 1964, a Petition for Removal to the United States District Court for the Eastern District of Texas, Sherman Division was filed in said court and the cause was removed to that Court on grounds of diversity of citizenship (R. 1-4).

Petitioner Lauril M. Allis and Respondent Louis Allis, Jr. were married in the State of Florida on June 1, 1957. (R. 5) Thereafter, about January 1, 1959, they moved to the State of Texas. (R. 5) Subsequently, in May, 1959, Respondent purchased certain real property located in Collin County, Texas, known as the Rolling Hills Ranch (R. 5) and took title to the property in his own name. Some years later, on May 7, 1963, Respondent Louis Allis, Jr. permanently separated himself from Petitioner and moved to Reno, Nevada. (R. 6) On May 10, 1963 he conveyed the Rolling Hills Ranch to Respondent Western Farms, Ltd., a Nevada corporation, the stock of which is owned by Respondent Louis Allis, Jr. (R. 6, 7) On June 25, 1963, Respondent Louis Allis, Jr. filed suit for a divorce from Petitioner Lauril M. Allis. (R. 6) While that suit was pending, in October, 1964, Petitioner filed suit for the purpose of adjudicating her community and homestead rights to the Rolling Hills Ranch. (R. 4-13) Thereafter, on January 15, 1965, the District Court of the

State of Nevada filed findings of fact and conclusion of law which, *inter alia*, granted Petitioner Lauril M. Allis a divorce from Respondent Louis Allis, Jr. and awarded Louis Allis, Jr. all of the stock in Respondent Western Farms, Ltd., which had been issued to him solely in consideration for the transfer to it of the Rolling Hills Ranch. (R. 62, 63, 68) In so holding, the Nevada District Court determined that the Rolling Hills Ranch was the sole and separate property of Respondent Louis Allis, Jr. and not the community property of Petitioner Lauril M. Allis and Respondent Louis Allis, Jr. (R. 62, 63, 68) The court also found that the Rolling Hills Ranch was not the homestead of Petitioner and Respondent at the time they were separated from each other. On October 18, 1965, the United States District Court for the Eastern District of Texas, Sherman Division, granted the motions for summary judgment of Respondents Louis Allis, Jr. and Western Farms, Ltd. on the grounds that (1) there is no genuine issue between the parties as to any material fact; (2) Appellant Lauril M. Allis is estopped to file suit in the State of Texas to place in issue the title to the real property known as the Rolling Hills Ranch; (3) the judgment of the District Court of Nevada armed by the Nevada Supreme Court is *res judicata* of Appellant's claim alleged in the suit filed by her to adjudicate title to the Rolling Hills Ranch and (4) the judgment of the Nevada Court is entitled to full faith and credit in the State of Texas. (R. 146-150)

Petitioner thereafter filed notice of appeal to the United States Court of Appeals for the Fifth Circuit. (R. 151) After the filing of briefs and oral argument, the Court of Appeals affirmed the judgment of the United States District Court on the grounds that (1) Texas courts would not look upon the Nevada decree as void for want of jurisdiction and (2) Texas courts would give effect to the Nevada judgment.

REASONS FOR GRANTING THE WRIT

1. There are genuine issues as to material facts alleged by Petitioner Lauril M. Allis as the basis for her claim to community and homestead interest in the Rolling Hills Ranch located in Collin County, Texas.

One ground on which the United States District Court granted Respondents' Motion for Summary Judgment is that there is no genuine issue of any material fact to be determined by the court. The Court of Appeals did not consider this question in its Opinion which is appended to this Application for Writ of Certiorari. The question is presented to this Court and the error preserved in order to demonstrate that the basis for the District Court's holding is not that the Petitioner's allegations lack substance, but rather that the allegations made and the issues raised by those allegations have been previously determined by the Courts of the State of Nevada. Hence, this ground for the

District Court's granting of the motion should be reversed for the same reasons which will be hereafter set forth as the reasons requiring reversal of the judgment of the District Court and the Court of Appeals.

It is apparent from a reading of the pleadings that the Petitioner's allegations were substantial. She alleged, among other things, that she and her then husband, Respondent Louis Allis, Jr., were residents of Texas at the time the Rolling Hills Ranch was purchased; that the Rolling Hills Ranch was their homestead at the time her husband purportedly conveyed it to Respondent Western Farms, Ltd.; and that the deed from Louis Allis, Jr. to Western Farms, Ltd. was void as an attempted conveyance of homestead without the joinder of the wife and was calculated to defraud the Petitioner of her community interest in the Rolling Hills Ranch (R. 4-13) These allegations were substantiated by the Petitioner in her answers to interrogatories propounded by the Respondents. (R. 93-100)

Furthermore the Respondents' motions for summary judgment and the supporting exhibits and briefs urge the court to grant the motion because the matters alleged in the Petioner's petition had previously been litigated in Nevada. There is no mention made in the motion, the exhibits, or the briefs filed by the Respondents to indicate that the motion should be granted because the allegations themselves lacked merit.

For these reasons, we urge that the Court reverse the judgments of the District Court and the Court of Appeals because, as hereafter set forth, Petitioner Lauril M. Allis is entitled to have a Texas court determine her rights to the Rollings Hills Ranch.

2. The holding by the United States Court of Appeals for the Fifth Circuit that Texas Courts would give effect to a Nevada judgment determining that real property located in Collin County, Texas is the separate property of Respondent Louis Allis, Jr. is a decision of an important question of local law in conflict with applicable local decisions.

The issued decided by the Fifth Circuit is whether the Petitioner may litigate in Texas courts questions of fact and issues of law previously passed on by the courts of the State of Nevada when those questions of fact and issues of law determine title to Texas realty. The United States District Court for the Eastern District of Texas held that the Petitioner was estopped to litigate these questions in Texas. The District also held that the judgment of the Nevada courts was *res judicata* of the claims alleged in Petitioner's suit filed in Texas and was, therefore, entitled to full faith and credit. The Court of Appeals did not consider whether the Petitioner was estopped, nor did it determine whether the Nevada judgment was *res judicata* of the claims made by the Petitioner in her Texas suit. Instead, it affirmed the judgment

on the grounds that the Nevada court had jurisdiction to pass on issues affecting title to Texas realty and that, therefore, as a matter of comity, the Texas courts would give binding effect to the Nevada judgment. In so holding, the Court of Appeals erroneously applied Texas law and for this reason, the judgment of the Court of Appeals must be reversed and remanded.

The findings and conclusions of the Nevada trial court directly determined the status of the title of the Rolling Hills Ranch and insofar as it did so, the judgment of the Nevada court was void for want of jurisdiction. *McIlreath v. McIlreath*, 345 S.W. 2d 722 (Tex. Sup. Ct., 1961) This basic want of jurisdiction is pointed up by the fact that the record owner of the ranch, Respondent Western Farms, Ltd., was not a party to the divorce action filed by Respondent Louis Allis, Jr., against Petitioner Lauril M. Allis. The Nevada court therefore could not have ordered a conveyance of the property to Petitioner even if it had concluded that she was entitled to it.

The Court of Appeals incorrectly reasons that because the Nevada court could have ordered the Petitioner to execute a release to the Texas property, which order, acting *in personam*, would have been binding on her and on a Texas court, the same courts would look upon the Nevada decree as a valid adjudication of title to Texas realty. The fallacy in this argument is that the Court of Appeals has equated

the imposition of a personal obligation to the legal validity of the judgment rendered in Nevada. The question here is not whether Lauril Allis could be compelled to execute a release to the Texas property; she could be. The question here is whether Texas courts would give effect to the Nevada judgment if it were presented as evidence of ownership of the property. This, in fact, is exactly what happened here. Petitioner brought suit to recover a claimed community interest in the Rolling Hills Ranch. The Respondents presented the Nevada judgment as proof that Petitioner had no claim to the ranch. The *McIlreath* case, far from supporting the Court of Appeals' conclusion, states that under such circumstances a foreign judgment would not be given binding effect:

> "We may say, however, that a portion of the decree is *inoperative* in this State when it purports to act in rem so as to directly affect the title to Texas lands." *McIlreath v. McIlreath*, supra, at p. 744 (Emphasis the Court's)

The courts of Nevada do not have jurisdiction to award title and the Nevada court's finding and conclusions are "inoperative" and could not and do not establish or vest title to the Rolling Hills Ranch in one party or the other.

The other reason advanced by the Court of Appeals is that the courts of Texas will, as a matter of comity, give binding effect to a Nevada judgment. We should like to point out that the second portion of the opinion is premised on its

conclusion that the Nevada court had jurisdiction of the subject matter. Hence, if this Court be of the opinion that the Nevada judgment is void for want of jurisdiction it need not inquire into the policy arguments advanced. It is obviously not policy of the courts of Texas to give effect to void judgments which adjudicate title to Texas realty.

We submit that it is not the policy of the courts of Texas to give binding effect to a decree of the nature of that entered by the Nevada court. In *Holt v. Guerguin*, 163 S.W. 10 (Tex. Sup. Court, 1914), for example, the Texas Supreme Court stated that the courts of one state cannot pass on the validity of a deed to property not located within the state. That, of course, is precisely what the Nevada court did here, for it specifically found that the conveyance of the Rolling Hills Ranch from Louis Allis, Jr. to Western Farms, Ltd. was valid.

This Court has also held that the courts of one state may not pass on the validity of conveyances of property located in another state:

> "The real estate was situated in Tennessee and governed by the law of its *situs*, and while by means of its power over the person of a party a court of equity may in a proper case compel him to act in relation to property not within its jurisdiction, its decree does not operate directly upon the property nor affect the title, but is made effectual through the coercion of the defendand, as, for instance, by directing a deed to be executed or canceled by or on behalf of the party. The court

'has no inherent power, by the mere force of its decree, to annul a deed, or to establish a title.' *Hart v. Sansom*, 110 U.S. 151, 155."

* * * * *

"To declare the deed to Mrs. Strange null and void, in virtue alone of the decree in New York, would be to attribute to that decree the force and effect of a judgment *in rem* by a court having no jurisdiction over the *res*." *Carpenter v. Strange*, 141 U.S. 87 (1891) at pp. 105, 106.

In *Carmichael, et al v. Delta Drilling Co.*, 243 S.W. 2d 458 (Tex. Civ. App., 1951) *err. ref.*, a Texas court again had the opportunity to set forth judicial policy with respect to the adjudication of title to property located in a state other than Texas. In this case, the court stated that it would not consider and decide a case which would have the effect of adjudicating title to property located in another state. The facts were that the plaintiffs had brought suit for ¼th of the value of oil sold under a lease on Indiana oil property, and for an order requiring the defendant to execute an assignment to them of a ¼th interest in the oil lease. The basis for the suit was an alleged oral agreement between the parties whereunder the plaintiffs agreed to develop and operate the oil lease located in the State of Indiana in return for a ¼th interest. The plaintiffs expressly disclaimed a ¼th interest in the oil lease itself, claiming only the right to an assignment of ¼th of the oil sold under the lease. The court held that it was without jurisdiction to consider the suit because the plaintiffs were in effect claiming equitable title to ¼th of the oil lease and were actually asking

the court to inquire into the title to the property. Since the property was located in the State of Indiana, the Court held that it had no power to adjudicate the claim since it would be in effect an adjudication of title to land located in a state other than Texas. Applying this case to the situation at bar we think it clear that a Texas court would view the award of the stock by the Nevada court as being in effect an adjudication of title to real property located in Texas. We believe, therefore, that the courts of the State of Texas would not treat the Nevada court's decision as binding and would entertain Petitioner's suit for a declaration of her rights in the Rolling Hills Ranch.

The Court of Appeals, however, reads *McIlreath v. McIlreath, supra*, as indicative of a state policy which would give binding effect to the Nevada judgment. But, the *McIlreath* opinion limits itself to a consideration of whether the court of Texas will refuse to recognize an Oklahoma judgment of divorce dissolving the matrimonial bonds between Oklahoma residents and disposing of the property rights of the parties to the Oklahoma proceeding. In *McIlreath*, the Texas Supreme Court did enforce an Oklahoma decree as a matter of comity, but it was careful to state this limitation on its holding:

> "As a corollary to this holding and as applicable to this case, we hold that the enforcement of an equitable decree entered by a sister state in a divorce case between *nonresidents* of the State Texas *who possess no peculiar property rights growing out of Texas marital laws*, does not violate the public policy of this state. Other factual situations are not before us and hence are not decided." *McIlreath v. McIlreath, supra*, at p. 733. (Emphasis added)

In another portion of its opinion, the court makes this statement:

> "Or to be specific and to the point insofar as this case is concerned, what difference does it make to the State of Texas whether the property here involved is awarded to the ex-husband, or the ex-wife of a broken Oklahoma marriage?" *McIlreath v. McIlreath, supra, at p.* 728

In still another portion of the opinion, the court observed as follows:

> "Quite obviously one authority must settle these [matrimonial property] rights if anything approaching fairness and equity is to be secured. Jurisdiction for such purpose rests with the courts of the matrimonial domicile which, in this case, is the State of Oklahoma." *McIlreath v. McIlreath, supra,* at p. 724.

In short, *McIlreath* was premised upon the indifference of Texas courts to the property rights of non-residents. Is this a sound basis for assuming judicial indifference when a resident of the state is involved?

Are we to assume that it is the policy of Texas courts to refer Texas land title problems to Nevada when, upon the dissolution of a marriage one of the parties seeks to remove himself from the jurisdiction of the state wherein he resided so that he may have his rights adjudicated in a forum that may be unfamiliar with Texas law and policy? As the Court of Appeals opinion indicates, Petitioner and Respondent Louis Allis, Jr. were Texas residents for most of the time that they were married to each other.

The court, in *McIlreath*, emphasized that the parties there possessed "no peculiar property rights growing out of Texas

marital laws". This is not the case in the instant suit as a reading of the Petitioner's petition and answers to Interrogatories will demonstrate. In the petition and answers, the Petitioner alleged that the Rolling Hills Ranch was acquired by her and her then husband, Louis Allis, Jr., when they were residents of the State of Texas. This question of residency is one that can be determined only by the courts of the domiciliary state, *Calkins v. Calkins*, 115 So. 866 (Alabama Sup. Ct., 1928); *Tilt v. Kelsey*, 207 U.S. 43, 52 L. Ed. 95 (1907). The Petitioner also alleged that the Rolling Hills Ranch was the community property of her and Louis Allis, Jr. Finally, and in the alternative, the Petitioner alleged that the Rolling Hills Ranch was the homestead of Petitioner and Respondent Louis Allis, Jr. at the time it was conveyed to Respondent Western Farms, Ltd. and that the deed of conveyance was void because she did not join in the conveyance as required by the laws of the State of Texas.

Petitioner does indeed claim to possess property rights growing out of Texas marital and homestead laws, and we therefore think it must be concluded that the courts of the State of Texas would permit the instant suit to be heard on the merits. We know of no instance where Texas courts have ever approved of the courts of a sister state determining with finality the homestead rights of a Texas resident.

The judgment of the Court of Appeals should be reversed and remanded because it violates long-standing principles that a court must have jurisdiction of the *res* in order to

determine title to that *res;* permits a plaintiff in a divorce action to select a forum unfamiliar with the legal principles which will control the disposition of property acquired by the parties while married; and will allow any husband wanting to divorce his wife to move to the State of Nevada, transfer realty to a dummy corporation in consideration for its stock, file suit for divorce and force his wife to attempt to establish her rights in a jurisdiction where witnesses may not be compelled to attend, and where her attorneys and the court will not be schooled in the subtleties and intricacies of the Texas community property law.

In this case, the husband sought to avoid litigating title to the Rolling Hills Ranch in Texas by conveying that property to a Nevada corporation and claiming before the Nevada court that the property was his separate property and not the community property of himself and Petitioner. The court so held and awarded the stock to the husband and thereby vested in him full right to own, control, and dispose of the Rolling Hills Ranch through the corporation established by him and of which he was the sole shareholder. In effect, the award of the stock to the husband was the award of the Rolling Hills Ranch because the Nevada court concluded that the husband was entitled to the stock only *after* it concluded that the Rolling Hills Ranch was the separate property of the husband and not the community property of the husband and the wife. To affirm this judg-

ment would be to permit a court to do by indirection what it has long been held could not be accomplished directly, and is tantamount to saying that Texas Courts have neither control nor concern over the ownership of its real estate upon the dissolution of a marriage of parties both of whom were residents of the state until their separation. This is not the judicial policy of the state of Texas and the Court of Appeals was in error in stating that it was.

3. The Nevada judgment would not be entitled to full faith and credit in the Courts of the State of Texas.

The Court of Appeals for the Fifth Circuit did not get to the question of whether the Nevada judgment must be given full faith and credit by the courts in the State of Texas. Local considerations notwithstanding, the Constitution might require that the Nevada judgment be given effect. We submit that the controlling decision in this area is *Fall v. Eastin*, 215 U.S. 1 (1909). In that case, this Court held that a state court has no jurisdiction over realty located in another state and that any decree purporting to have an *in rem* effect on such foreign realty is void, thus relieving the situs state of any obligation to recognize that judgment under principles of full faith and credit. As stated above, Respondents did seek to have the United States District Court and the Court of Appeals give an effect *in rem* to the Nevada judgment. It is therefore not entitled to full faith and credit. U. S. Constitution, Art. IV, § 1.

WHEREFORE, Petitioner prays that a Writ of Certiorari be issued for review of the judgment of the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

CLARK, WEST, KELLER, CLARK & GINSBERG,

By Allen Butler
Allen Butler
Attorneys for Petitioner.

2424 First National Bank Building,
Dallas, Texas 75202.

September, 1967

CERTIFICATE OF SERVICE

I certify that on this 20 day of September 1967 I served the foregoing application on Mr. Robert L. Blumenthal, 1700 Mercantile Bank Building, Dallas, Texas 75202 by depositing a copy thereof in the United States mail with proper postage affixed.

Allen Butler
Allen Butler

Appendix A

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

October Term, 1966

No. 23203

D. C. Docket No. CA 1616

LAURIL M. ALLIS,

Appellant,

v.

LOUIS ALLIS, JR. and
WESTERN FARMS, LTD.,

Appellees.

Appeal from the United States District Court for the Eastern District of Texas.

Before THORNBERRY and COLEMAN, Circuit Judges, and YOUNG, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment

of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Lauril M. Allis, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 7, 1967

Issued as Mandate: June 29, 1967

Appendix B

In the
UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 23203

LAURIL M. ALLIS,

Appellant,

v.

LOUIS ALLIS, JR. and
WESTERN FARMS, LTD.,

Appellees.

Appeal from the United States District Court for the Eastern District of Texas.

(June 7, 1967.)

Before THORNBERRY and COLEMAN, Circuit Judges, and YOUNG, District Judge.

THORNBERRY, Circuit Judge: Appellant, Lauril M. Allis, challenges on this appeal the District Court's dismissal of an action instituted by her for the purpose of establishing certain interests in Texas realty allegedly acquired during her marriage with appellee, Louis Allis, Jr. The District Court concluded that appellant was estopped

to bring suit in Texas to relitigate the question of title because that issue had been previously decided adversely to her in a divorce proceeding in the State of Nevada. The judgment of the Nevada court, which was subsequently affirmed by the supreme court of that state, had determined the realty in question to be the sole and separate property of appellee Louis Allis, Jr. In dismissing appellant's claim, the District Court below was of the opinion that the prior adjudication by the Nevada court was res judicata of appellant's interests in the disputed property and therefore entitled to Full Faith and Credit in the courts of Texas. Careful review of the applicable Texas law, which governs this diversity action, convinces us that the judgment of the District Court should be affirmed.

In 1957, appellant and appellee Allis were lawfully married in the State of Florida. In January 1959, they moved to Texas.[1] In May of that year, appellee Allis purchased 314.6 acres of land located in Collin County, Texas, ownership of which is the disputed issue in this controversy.[2] At some time between May 1959 and October 1961, the spouses purchased a house trailer and moved it onto the Collin County property where they resided until the trailer was destroyed by fire in October 1961. After that date, the spouses resided in various locations in Dallas, McKinney,

[1] The issue whether appellee Allis intended on that date to establish permanent residence in Texas was disputed, appellee Allis contending that the spouses did not acquire domicile in Texas prior to June 1959.

[2] Appellee Allis contended that on the date of purchase he was domiciled in the State of Wisconsin and that the purchase was made in his name alone, with his separate funds, and upon his separate credit.

and Allen, Texas, until May 7, 1963, when appellee Allis removed himself to Nevada in order to establish permanent residence in that state. Shortly thereafter, he conveyed title to the realty in question to appellee Western Farms, Ltd., a Nevada corporation in which he was the sole stockholder. In June 1963, he initiated divorce proceedings against appellant in the Second Judicial Court of Nevada. Appellant appeared personally in the Nevada divorce proceedings and entered a counterclaim that she be awarded the divorce together with an equitable division of the marital property and a reasonable sum by way of alimony. After a full trial on the merits, the court awarded the divorce to appellant on her counterclaim together with alimony in the amount of $1,000 a month and the sum of $6,000 for the value of her community interests in the marital property. In its decision, which indicates that Texas law was applied to the facts, the Nevada court concluded that appellant had acquired no interest whatsoever in the Collin County property.[3] The divorce decree itself expressly provided that the disputed realty "was at the time it was transferred by Plain-

[3] More specifically, in its findings of facts and conclusions of law filed on January 15, 1965, the court found that at the time the disputed property was purchased by appellee Allis he was domiciled in the State of Wisconsin and did not become a resident of Texas until sometime after the purchase; that the down payment and all subsequent annual payments of principal were made from his separate property acquired prior to marriage; that there never occurred any commingling of community funds or community credit in connection with the purchase or in connection with subsequent principal or interest payments; that the promissory note given by appellee Allis was executed solely by him and solely upon his separate credit; that the conveyance to Western Farms, Ltd., was fully revealed to appellant and was not done with intent to defraud her; and that if any portion of the disputed realty had ever been homestead it had been abandoned as homestead long prior to the date of such conveyance. Record, pp. 58-63.

tiff to Western Farms, Ltd., the sole and separate property of the Plaintiff, and such conveyance to Western Farms, Ltd., was a valid and effective conveyance"; and that "the stock in Western Farms, Ltd. . . ., standing in the name of the Plaintiff is the sole and separate property of the Plaintiff without any right, title, interest or claim therein in the Defendant."

In October 1964, appellant instituted the present litigation in the state district court for Collin County, Texas, seeking a further adjudication of her interests in the Collin County property. On motion of the appellees, the cause was removed to the United States District Court for the Eastern District of Texas on the basis of diversity of citizenship. There appellees moved for summary judgment, relying upon the Nevada decree. On March 31, 1965, the District Court granted the motions with regard to certain personalty located on the Collin County property, but postponed any final determination in so far as title to the realty itself was concerned pending final disposition of the litigation in the courts of Nevada. On June 16, 1965, the Nevada Supreme Court entered final order dismissing appellant's appeal in the divorce proceedings, and, on October 18, 1965, the District Court granted appellees' motions for summary judgment in their entirety.

Inextricably involved in the resolution of this controversy is the often adjudicated, much discussed issue of the appropriate degree of recognition to be accorded equitable decrees affecting realty situated beyond the jurisdiction of the ren-

dering court.[4] In *Fall v. Eastin*, 1909, 215 U.S. 1, 30 S. Ct. 3, 54 L. Ed. 65, the doctrine arose that a court has no jurisdiction over realty located in another state and that any decree purporting to have an in rem effect on such foreign realty is void, thus relieving the situs state of any obligation to recognize that judgment under principles of Full Faith and Credit. A significant, seemingly incongruous exception to this doctrine is that a court, having in personam jurisdiction over a litigant may indirectly act upon realty situated in another jurisdiction by means of an equitable decree directing that party to convey title to the foreign realty to another. If the court, having properly acquired such personal jurisdiction over the party before it, enforces its decree by compelling a conveyance, even though it be upon pain of contempt, such conveyance is entitled to Full Faith and Credit. A significant, seemingly incongruous exception to this doctrine is that a court having in personam jurisdiction over a litigant may indirectly act upon realty situated in another jurisdiction by means of an equitable decree directing that party to convey title to the foreign realty to another. If the court, having properly acquired such personal jurisdiction over the party before it, enforces

[4] See generally Barbour, the Extra-Territorial Effect of the Equitable Decree, 17 Mich. L. Rev. 527 (1919); Currie, Full Faith and Credit to Foreign Land Decrees, 21 U. Chi. L. Rev. 620 (1954); Goodrich, Enforcement of A Foreign Equitable Decree, 5 Iowa L. Bull. 230 (1920); Hancock, Full Faith and Credit to Foreign Laws and Judgments in Real Property Litigation: The Supreme Court and the Land Taboo, 18 Stan. L. Rev. 1299 (1966); Lorenzen, Application of Full Faith and Credit Clause to Equitable Decrees for the Conveyance of Foreign Land, 34 Yale L.J. 591 (1925); Reese, Full Faith and Credit to Foreign Equity Decrees, 42 Iowa L. Rev. 183 (1957); Schwartz, *Fall v. Eastin* Revisited: Extra-territorial Effect of Foreign Land Decrees, 54 Dick. L. Rev. 293 (1950), and the numerous cases cited and discussed therein.

its decree by compelling a conveyance, even though it be upon pain of contempt, such conveyance is entitled to Full Faith and Credit in the situs state.[5] If, however, the party subject to the equitable decree should remove himself from the court's jurisdiction before the order to convey can be enforced, *Fall v. Eastin* stands for the proposition that the situs state need not extend Full Faith and Credit to the unexecuted decree. Nevertheless, a number of state courts have chosen to recognize the validity of unexecuted equitable decrees, apparently upon the theory that the situs state is no more deprived of exclusive jurisdiction over its realty by implementing such decrees than by according Full Faith and Credit to deed actually executed under foreign court orders.[6]

In *McElreath v. McElreath*, 1961, 162 Tex. 190, 345 S.W. 2d 722, the Texas Supreme Court drew heavily upon the reasoning of these state court decisions to enforce an equitable decree entered by an Oklahoma court in a divorce proceeding which ordered the transfer of title to realty located in Texas. In that decision, the court chose to recog-

[5] *Fall v. Eastin, supra; Carpenter v. Strange*, 1891, 141 U.S. 87, 11 S. Ct. 960, 35 L. Ed. 640; *Groom v. Mortimer Land Co.*, 5th Cir. 1912, 192 Fed. 849, cert. denied, 225 U.S. 700, 32 S. Ct. 835, 56 L. Ed. 1264.

[6] See, *e.g.*, *Rozan v. Rozan*, 1957, 49 Cal. 322, 317 P.2d 11; *Redwood Inv. Co. v. Exley*, Dist Ct. App. 1923, 64 Cal. App. 455, 221 Pac. 973; *Idaho Gold Mining Co. v. Winchell*, 1899, 6 Idaho 729, 59 Pac. 533; *Meents v. Comstock*, 1943, 230 Iowa 63, 296 N.W. 837; *Matson v. Matson*, 1919, 186 Iowa 607, 173 N.W. 127; *Dunlap v. Byers, 1896*, 110 Mich. 109, 67 N.W. 1067; *McCune v. Goodwillie*, 1907, 294 Mo. 306, 102 S.W. 997; *Weesner v. Weesner*, 1959, 168 Neb. 346, 95 N.W. 2d 682; *Burnley v. Stevenson*, 1873, 24 Ohio St. 474; *McElreath v. McElreath*, 1961, 162 Tex. 190, 345 S.W. 2d 722; *Mallette v. Scheerer*, 916, 164 Wis. 415, 160 N.W. 182.

nize the foreign decree on principles of comity rather than under the doctrine of Full Faith and Credit, reasoning that

> Comity, in the absence of a controlling decision by the United States Supreme Court under the "Full Faith and Credit" clause, seems the preferable basis for a state court decision. In that way there is no danger of restricting the scope of state public policy by a prediction of what the United States Supreme Court may hold in any given situation. Our holding therefore is that as a matter of comity we will enforce the equitable decrees of a sister state affecting Texas land so long as such enforcement does not contravene an established public policy in this State.

345 S.W. 2d at 733. The decree before the court in *McElreath*, however, unlike that involved in the instant controversy, was rendered incident to divorce proceedings between spouses who were nonresidents of Texas and whose marital domicile was in a state other than Texas. In addition, that decree contained an order specifically requiring the husband to convey title to Texas realty to his ex-wife. Our role in this diversity action therefore becomes that of determining whether the reasoning adopted by the court in *McElreath*, in so far as it may be applicable to the facts before us, supports the action of the District Court in dismissing appellant's suit. Proper resolution of this issue necessarily calls for careful scrutiny of the controlling principles upon which the *McElreath* court relied to justify its decision.

In choosing to enforce that portion of the Oklahoma decree which specifically ordered the conveyance of Texas realty, the court in *McElreath* rejected the contention that the mere existence of a Texas statute prohibiting a court in a divorce action from ordering either spouse to divest himself of title to separately owned property constituted a sufficient policy basis to justify nonenforcement. In so concluding, the court reasoned that the statute was intended to apply only to Texas courts rendering divorce decrees in suits involving Texas residents—that the public policy expressed in the statute was not intended to encompass settlements reached by the courts of other states involving marital property disputes peculiar to residents of those states. The court was careful, moreover, to draw a distinction between an in rem decree purporting to directly affect title to land in another state and an equitable in personam decree limited to ordering a party before the court to convey title to foreign realty. Construing the direct order to convey in the Oklahoma decree as essentially in personam in nature, the court chose to enforce it on principles of comity, having concluded that no well-defined public policy of Texas dictated against its implementation. In reaching such result, the court necessarily rejected the contention that an unexecuted equitable decree directing the conveyance of title to realty situated in another state is in essence in rem and thus beyond the jurisdiction of the foreign court to enter:

> [N]o in rem effect is given to the Oklahoma decree. It does not pass title. It is the action of the Texas

court in giving effect to the findings of fact supporting the Oklahoma decree which effects a transfer of title.

345 S.W. 2d at 733. Therefore, in *McElreath*, as here, the court was confronted with two critical issues: (1) whether the decree of the foreign court was in excess of its jurisdictional powers; and, assuming the existence of jurisdiction, (2) whether some overriding state policy dictated against implementation of that decree by a court of the situs state.

I.

Looking initially to matters of form, it is apparent that the decree before us, unlike that involved in *McElreath*, fails to contain the readily recognizable in personam order directing the execution of a conveyance. It simply provides that the Collin County realty "was at the time it was transferred by Plaintiff to Western Farms, Ltd., the sole and separate property of the Plaintiff, and such conveyance to Western Farms, Ltd., was a valid and effective conveyance." The absence of an express order to convey does not appear at all extraordinary, however, in view of the Nevada court's determination that title to the realty in dispute had at all times remained in appellee Allis. Under such circumstances, any order requiring appellant to convey title or to execute a release to appellee Allis of any interest she might claim in the realty would have been superfluous. Mindful of the *McElreath* court's declaration that "any portions of . . . [a] decree purporting to act in rem would be ineffective because of a lack of jurisdiction," we nevertheless conclude that the mere failure of the Nevada court to include in its decree a formal order to

convey cannot under the facts be properly construed as evidencing an intent on the part of that court to exceed its jurisdictional powers. Both spouses personally appeared in the Nevada proceedings, voluntarily subjecting themselves to the in personam jurisdiction of the Nevada court. In her counterclaim, appellant affirmatively invoked the power of that court to award the divorce to her and to adjudicate her interests in the marital property. She did not at that time, nor does she now urge that the in personam jurisdiction thus acquired by the Nevada court was in any respect improper. Neither does she dispute the proposition that had the court deemed it necessary, it could have coerced the excution of a release of any interest that she claimed in the Texas realty, which would have clearly been binding upon the Texas courts. This being so, she cannot now successfully argue that the Nevada decree, which in essence manifests a refusal to recognize a personal obligation on the part of appellee Allis to convey title to her, represents any less conclusive adjudication of the personal rights and duties of the parties than would a decree which did, in fact, recognize a personal obligation to convey. It cannot be logically contended that the power of a court to render a binding determination of the personal rights and obligations of those parties over whom it has properly acquired in personam jurisdiction can be in any respect diminished or destroyed by the mere form of a decree entered pursuant to that jurisdiction. It is far more in keeping with sound jurisdictional concepts to conclude that such decree, regardless of its specific wording, should be looked upon as conclusive of the personal equities therein deter-

mined, such equities having been inarguably adjudicated upon a legitimately established foundation of in personam jurisdiction. The mere fact, moreover, that such validly created rights and obligation may to some degree involve the parties' interests in foreign realty cannot negate the in personam effect of the decree creating those equities. The court in *McElreath* recognized as much in its opinion on motion for rehearing:

> In numerous opinions an in rem judgment rendered by a court of one state purporting to directly affect the title to land in another state is spoken of as being void for want of jurisdiction over the subject matter. In a sense, it could be argued with reason that this Court cannot authoritatively say that an Oklahoma decree which has been affirmed by the Supreme Court of that state is *void*. We may say, however, that a portion of the decree is *inoperative* in this state when it purports to act in rem so as to directly affect the title to Texas lands. In determining whether or not a decree of a sister state, or the equities upon which it is based should be enforced in this state, we may also consider matters which go to the jurisdiction of the court of the sister state over the persons involved in the particular suit as well as the res. In this case, the order of the Oklahoma court entered in accordance with the law which controls the marital rights of the parties was an order operating in personam and one which the Oklaoma court had jurisdiction to render. That court also had jurisdiction of the parties litigant . . . . [T]his jurisdictional status could not be changed by one of them

> crossing the Red River into Texas after their respective rights had been settled and adjudicated by the Oklahoma courts.

345 S.W. 2d at 744. We may thus conclude, in accordance with the rationale adopted in *McElreath*, that it was the action of the District Court below in choosing to give operative effect to the findings of fact upon which the Nevada decree was based, and not the action of the Nevada court itself, which directly affected title to the disputed realty.

II.

Having concluded that the courts of Texas would be unlikely to look upon the Nevada decree as void for want of jurisdiction, we reach the final, yet equally critical issue whether such decree should be given binding effect on principles of comity. In keeping with *McElreath*, we must determine whether recognition of the decree would have the effect of contravening some well-defined policy of the State of Texas. More specifically, the appropriate inquiry is whether giving deference to that decree "would be against good morals or natural justice, or for some other reason would be prejudicial to the state or its citizens." 345 S.W. 2d at 746 (quoting 15 C.J.S. *Conflict of Laws* § 4(b), at 854).

Initially, we are constrained to recognize the limited scope of *McElreath* made explicit by the court at the outset of its opinion:

> This is not a case wherein one of the parties moved from Texas to Oklahoma for the purpose of establishing residence for divorce purposes. Neither is this a

> case wherein either party because of residence in Texas had acquired property rights under and by virtue of the marital laws of this State. We are not called upon to pass upon the hypothetical rights of hypothetical persons in the situations mentioned.

345 S.W. 2d at 723-24. It is thus apparent that the present controversy presents in a justiciable context the very "hypothetical" situation concerning which the court in *McElreath* expressly deferred judgment. Here, appellee Allis did, in fact, remove himself to another jurisdiction in order to establish residence for divorce purposes, and here, the central issue in dispute is whether the Texas realty was acquired under the marital laws of Texas. It thus falls our lot to anticipate the result most likely to be reached by a Texas court were it confronted with the same issue. Fully cognizant that our role in this diversity context is restricted to that of implementation rather than innovation, we are confident that affirmance of the District Court's dismissal of the instant suit will serve to promote rather than frustrate the policies enunciated in *McElreath*. The significant underlying principle pervading in the court's analysis in *McElreath* is succinctly set forth in the majority opinion on motion for rehearing:

> As pointed out in the original opinion, if there be any semblance of fairness achieved in settling the property rights of divorcing persons holding property in two or more states, it must be done by a court operating in one jurisdiction. The problem cannot be adequately solved

> by the piecemeal attempts of several courts in several states.
>
> The question of the enforceability of equitable decrees arising out of divorce cases relating to lands in states other than the matrimonial domicile is one of growing importance. It demands some solution which is hardly met by the adoption of a strictly "hands off" or "do nothing" policy on the part of the courts of the states where the real property may be located.

345 S.W. 2d at 748. Adhering to this controlling principle, the majority in *McElreath* chose to enforce the decree in that case in the face of the vigorous contention of four members of the court that the existence of a state statute expressly prohibiting Texas courts from entering a similar decree afforded compelling evidence of a policy suffiicient to deny enforcement. Significantly, in the case before us, no state statute nor policy has been brought to our attention which might conceivably be frustrated by a recognition of the rights and obligations adjudicated by the Nevada decree. As previously noted, both spouses appeared personally before the Nevada court, and the record of the proceedings in that court demonstrates that Texas law was applied to determine their interests in the marital property. By way of counterclaim, appellant affirmatively invoked the power of the Nevada tribunal to adjudicate her interests in the marital property, thereby obtaining substantial benefits under the

court's decree.[7] The mere possibility, which has not even been advanced in this controversy, that a foreign court might fail to apply the law of Texas exactly as a Texas court might apply it, is not, in our opinion, sufficient to justify attributing to the State of Texas an established policy requiring a second application of the same law by its own courts. *Cf. Fauntleroy v. Lum*, 1908 210 U.S. 320, 28 S.Ct. 641, 52 L. Ed. 1039. As aptly recognized by the court in *McElreath*:

> There is something incongruous and out of keeping with the concept of orderly processes to tolerate a situation wherein solemn court decrees may be flouted by playing hop-skip with state boundaries.

345 S.W. 2d. at 724.

Applying the foregoing principles to the specific facts before us, we are convinced that the action of the District Court in choosing to give conclusive effect to the rights and equities adjudicated in the Nevada proceedings cannot be viewed as incompatible with any well-defined public policy of the State of Texas. Accordingly, the judgment of the District Court is

AFFIRMED.

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[7] In support of its decision, the court in *McElreath* expressly cited several prior Texas cases which had sustained the validity of foreign equitable decrees involving Texas realty on the theory that a party who had affirmatively invoked or acquiesced in the jurisdiction of a foreign court to adjudicate his personal interests in such realty would be estopped to challenge the conclusive, in personam effect of that determination in a subsequent action instituted in the situs state. See *Miller v. Schaefer*, Tex. Civ. App. 1948, 211 S.W. 2d 600, writ refused; *Greer v. Greer*, Tex. Civ. App. 1945, 189 S.W. 2d 104, rev'd. on other grounds, 1946, 144 Tex. 528, 191 S.W. 2d 848; *Hall v. Jones*, Tex. Civ. App. 1932, 54 S.W. 2d 835, no writ history.

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In the

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OCTOBER TERM, 1967

No. 577

LAURIL M. ALLIS,

Petitioner,

v.

LOUIS ALLIS, JR. AND WESTERN FARMS, LTD.,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

In the statement of the facts of the brief filed by Petitioner, the principal facts are omitted and the principal issues are not set forth. In order to supply the omissions and correct the misstatements Respondents submit the following statement of the case.

Respondent Louis Allis, Jr. established residence in Nevada on May 7, 1963 (R. 56). On May 10, 1963 Respondent Allis conveyed the Rolling Hills Ranch to a Nevada corporation, Respondent Western Farms, Ltd. in return for all of the stock of Western Farms,

Ltd. (R. 42, 62). On June 25, 1963, Respondent Louis Allis; Jr. filed suit for divorce in Washoe County, Nevada against Petitioner and on July 12, 1963 Petitioner appeared and answered (R. 101-102). On September 28, 1964 this cause went to trial in Washoe County, Nevada (R. 55), and on October 1, 1964 at the close of Respondent's case in chief, Petitioner Lauril M. Allis filed a counterclaim for divorce, alimony, and a division of community property in Nevada and elsewhere (R. 105, 106, 55). In the prosecution of her counterclaim, Petitioner asserted an interest in the stock of Petitioner Western Farms, Ltd. as a result of the conveyance of the Rolling Hills Ranch to such corporation by Respondent Louis Allis, Jr., tracing what she asserted to be community property into the shares of stock acquired in exchange therefor (R. 62). Additionally, Petitioner claimed some type of homestead interest in the Rolling Hills Ranch (R. 63).

The Nevada trial court found that the conveyance of the Rolling Hills Ranch to Western Farms, Ltd. was valid, and was relied on by Petitioner Lauril M. Allis in her assertion of a community interest in the stock of Western Farms, Ltd. (R. 62 Findings of Fact IV.(d) (6)), and that the Rolling Hills Ranch was not homestead of Louis Allis, Jr. and Lauril M. Allis on the date of conveyance to Western Farms, Ltd. and if it had ever been a homestead it had been abandoned as a homestead long prior to its conveyance to Western Farms, Ltd. (R. 63, Finding of Fact IV.(d) (7)).

The Nevada Court therefore reached the position urged by Petitioner Lauril M. Allis that she was entitled to a community interest in the Western Farms, Ltd. stock and determined: (1) that Louis Allis, Jr. was a resident and domiciliary of the State of Wisconsin at the time he acquired the Rolling Hills Ranch (R. 61-62, Findings of Fact IV.(d)(1)(2)(3)); (2) that the Rolling Hills Ranch was acquired on May 15, 1959 with the separate property and on the separate credit of Louis Allis, Jr. (R. 62, Finding of Fact IV.(d)(4)), and paid for solely from his separate property (R. 62, Findings of Fact IV.(d)(4)); and (3) that Louis Allis, Jr. did not become a resident of the State of Texas until some time in the month of June 1959 (not about January 1, 1959 as stated in Petitioner's brief, Page 3) (R. 61-62, Finding of Fact IV.(d)(3)). Based on these findings of fact the Nevada Court concluded as a matter of law that the Rolling Hills Ranch was the sole and separate property of Respondent Louis Allis, Jr., at the time of its conveyance to Western Farms, Ltd. (R. 68, Conclusion of Law III.(d)), that such conveyance to Western Farms, Ltd. was valid and effective (R. 68, Conclusion of Law III.(d)) and that the stock of Western Farms, Ltd. was the separate property of Respondent (R. 68-69, Conclusion of Law III.(e)).

The decision of the Nevada District Court was filed December 24, 1964 (R. 46), and the Findings of Fact and Conclusions of Law and Decree were filed on Janu-

ary 15, 1965 (R. 55, 73). The Nevada Court awarded the divorce to Petitioner Lauril M. Allis and awarded her substantial alimony and all of the value of the community property less community debts (R. 73-84). On May 10, 1965 Petitioner Lauril M. Allis perfected her appeal to the Nevada Supreme Court (R. 130) and on June 16, 1965 Petitioner dismissed her appeal with prejudice by stipulation (R. 130-131).

While asserting in Nevada the validity of the conveyance on May 10, 1963 of the Rolling Hills Ranch to Western Farms, Ltd. as a part of her claim to Western Farms, Ltd. stock, Petitioner Lauril M. Allis filed this suit on October 13, 1964 in Texas (R. 13) to avoid the conveyance of the Rolling Hills Ranch to Western Farms, Ltd. and litigate again the same issues as to the separate or community nature of Rolling Hills Ranch then being litigated in Nevada (R. 4-6).

The United States District Court for the Eastern District of Texas granted summary judgment, which judgment is fully supported by any one or more of the following grounds: (1) the adjudication of the counterclaim of Petitioner by the Nevada Court that the conveyance to Western Farms, Ltd. was valid and the Rolling Hills Ranch was separate property of Respondent Allis at the time of conveyance constitutes an estoppel by judgment from the relitigation by Petitioner of the same subject matter; (2) as a matter of comity by the Texas Courts the Nevada judgment is res judicata of all matters sought to be relitigated by

Petitioner; (3) under the Constitution of the United States the judgment of the Nevada Court is res judicata and entitled to full faith and credit in the Courts of Texas; (4) Petitioner, having asserted and relied on the validity of the conveyance to Respondent Western Farms, Ltd. of the Rolling Hills Ranch in the Nevada litigation, is now judicially estopped to attack the validity of such conveyance in Texas.

The Court of Appeals for the Fifth Circuit found that the decision of the United States District Court was correct; that the Nevada Court had jurisdiction to render its judgment in this cause; and that as a matter of comity the State of Texas would recognize and apply the judgment of the Nevada Court. In reaching this conclusion, the Fifth Circuit applied the conflict of laws case authority of the courts of Texas.

ARGUMENT

There is no genuine issue of fact relating to any of these grounds, and Petitioner's brief points out none. The alleged issue of fact raised in Petitioner's Petition can be reached only if Petitioner is entitled to relitigate matters and facts already fully litigated in Nevada. The decision of the Court of Appeals does not involve the determination of a federal question, nor is the decision of the Court of Appeals in conflict with the decision of any other Court of Appeals on the same matter. Indeed, the only question before the Court was the question of the proper application of the conflict of

laws authority of the State of Texas, and although it is not clear what special or important reasons Petitioner cites for the granting of certiorari in this cause, it would appear that basic contention by Petitioner is that the decision of the Court of Appeals is in conflict with applicable Texas law. Petitioner admits there is no federal question and the lower courts have not applied the "full faith and credit clause" of the United States Constitution, Article IV, Section 1.

The fact is that as the decision of the Court of Appeals carefully points out, its decision is based on and completely consistent with the case law of the State of Texas.

In addition to *McElreath* v. *McElreath*, 162 Tex. 190, 345 S.W. 2d 722 (1961), so carefully discussed by the Court of Appeals, the following cases each almost precisely in point, have been decided by the Courts of the State of Texas, and have been cited with approval by the Supreme Court of the State of Texas. In *Hall* v. *Jones*, 54 S.W. 2d 835 (Tex. Civ. App. 1932), *no writ history*, the Plaintiff asserted in Oklahoma an interest in Texas real estate under a deed to such real estate. The Oklahoma court found that the deed was ineffective to convey title. Subsequently, Plaintiff brought suit in Texas and the Texas court recognized the Oklahoma adjudication that the deed was insufficient to pass title to Texas real estate, and held that such adjudication barred the maintenance of suit in Texas, and that Plaintiff was estopped from subsequently

litigating that question again in Texas. The court used the following language:

> "The fact must be kept steadily in mind that the Oklahoma judgment did not purport either to divest or invest the title to the property. It did not preclude or purport to preclude plaintiff in error from presenting and enforcing any other evidence of title to this property. It simply adjudicated the deed in question to be insufficient to pass title to the property involved.
>
> "It is elemental that the courts of one state have no authority or jurisdiction to determine a naked question of title to real property situated in another state, or to divest or invest the title.
>
> "But it seems to be equally well settled that the courts of one state may exercise jurisdiction, when affirmatively invoked or acquiesced in, to determine the validity or effect of a deed of conveyance of real property situated in another state so as to bind the parties to such decree, which, operating directly upon them personally, prohibits them from disputing it in another state."

The fact question in *Hall* v. *Jones* is almost identical to the fact question in the present case. In the present case the Nevada court had before it the deed being claimed under by Petitioner Lauril M. Allis in order to entitle her to an interest in corporate stock received in consideration for such deed. The court adjudicated the question of the deed's validity and of the separate or community nature of the Rolling Hills Ranch in litigation in which the Petitioner Lauril M. Allis acquiesced, and indeed cross-acted and received a di-

vorce and alimony. Under such circumstances, the adjudication is an estoppel and res judicata to this proceeding.

In *Greer* v. *Greer*, 189 S.W. 2d 104 (Tex. Civ. App. 1945) *reversed on other grounds*, 144 Tex. 528, 191 S.W. 2d 848 (1946) the Court was faced with a very similar fact situation to that in the present litigation. An Oklahoma Court in a divorce action in Oklahoma found that certain real property located in Wood County, Texas was the separate property of Rosetta Greer, and that L. C. Greer, her former husband, held title to such property in trust for her benefit as a result of the separate nature of the property. The Texas Court held that the Oklahoma judgment determining that the property in question was the separate property of Rosetta Greer was res judicata, entitled to full faith and credit under the Constitution of the United States, and that the title held by L. C. Greer was in trust for Rosetta's benefit. The Court used the following language at page 105:

> "It is observed that the Oklahoma District Court found and adjudged in substance that the 70-acre tract had been purchased and paid for out of the separate funds of Rosetta Greer, and that although the deed was taken in the name of L. C. Greer as a matter of convenience, the title was held in his name in trust for the benefit of Rosetta Greer. The transcript of the judgment roll of that court discloses that above issues were raised and joined by evidence offered by both litigants under their respective extensive pleadings in that trial and

> they had appeared in person and by counsel. Under the foregoing status, we are in accord with the trial court's action in the instant trial wherein "full faith and credit" under the provisions of Article 4, Sec. 1, of the Constitution of the United States was given above findings by the Oklahoma District Court so as to preclude L. C. Greer under the doctrine of res adjudicata from litigating in the instant trial the same issues of fact. Massie v. Watts, 6 Cranch 148, 3 L.Ed. 181; Hall v. Jones, Tex. Civ. App., 54 S.W. 2d 835; 34 C.J. p. 1137; Burnley v. Stevenson, 24 Ohio St. 474, 15 Am. Rep. 621; Bailey v. Tully, 242 Wis. 226, 7 N.W. 2d 837, 840, 145 A.L.R. 579, and cases therein collated from various states on page 585."

Although the Court of Civil Appeals holding was reversed and remanded by the Texas Supreme Court on subsequent appeal it was reversed on the sole point that the Oklahoma judgment did not describe the property sufficiently. This defect is not present in the present litigation as the decree and the findings of fact and conclusions of law of the Nevada Court at pages 58-61 and pages 76-80 of the Record reflect. The Civil Appeals opinion quoted from herein is cited with approval by the Texas Supreme Court in *McElreath v. McElreath*, 162 Tex. 190 at 204, 345 S.W. 2d 722 at 731 (1961) although vigorously attacked by the dissent.

In *Milner* v. *Schaefer*, 211 S.W. 2d 600 (Tex. Civ. App. 1948) *error refused*, the Court had before it a Colorado agreed judgment settling title to certain land owned by a partnership between the various partners. Some of the lands involved were in Texas. The Texas

Court enforced the determination of title by the Colorado Court on the ground that the Colorado Court was determining the validity and effect of a contract entered into by the parties (similarly to whether the deed by Louis Allis, Jr. to Western Farms, Ltd. was valid and effective as asserted by Petitioner) and not attempting to determine naked title to Texas real estate. The Court used the following language at page 605:

> "However, the Colorado decree did have the effect of judicially determining that Milner had made a valid contract with Schaefer and Lewis under the terms of which Schaefer and Lewis were entitled to receive the Texas property belonging to the partnership. Milner had invoked the jurisdiction of the Colorado court. It had jurisdiction of all the parties and its judgment is binding and operative under the rules of res judicata and estoppel by judgment."

These cases, cited in footnote 7 to the opinion by the Court of Appeals, reflect that the Court of Appeals analysis of *McElreath* v. *McElreath, supra,* was accurate. And see *Baughan* v. *Goodwin,* 162 S.W. 2d 732 (Tex. Civ. App. 1942) *writ refused, want of merit.*

Even as described in Petitioner's brief, the cases of *Holt v. Guerguin,* 106 Tex. 185 (1914), 163 S.W. 10, and *Carmichael* v. *Delta Drilling Co.,* 243 S.W. 2d 458 (Tex. Civ. App. 1951), *error refused,* do not show that the public policy of the State of Texas is contrary to the holding of the Court of Appeals below and a read-

ing of these cases show that they are wholly irrelevant to this argument.

CONCLUSIONS

The questions raised by Petitioner have no national interest, and indeed affect only the private rights between the parties. Petitioner has shown no special or important reasons for the granting of her petition for certiorari. Perhaps the most compelling reason for not granting the Writ of Certiorari is that the opinion of Court of Appeals for the Fifth Circuit is correct and correctly applies Texas law as a matter of comity to a Nevada judgment.

Although it is Respondent's position that the judgment of the Nevada Court is entitled to full faith and credit under the United States Constitution, neither the Court of Appeals nor the District Court felt it necessary to reach this position, for each held that as a matter of comity under Texas law the judgment would be given controlling effect by the Texas courts.

For these reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this .....day of ....., 1967, I served the foregoing Brief on Mr. Allen Butler, 2424 First National Bank Building, Dallas, Texas 75202 by depositing a copy thereof in the United States mail with proper postage affixed.

.....